

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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PERMA-PIPE, INC. )  
Plaintiff, )  
v. )  
BURTON H. KLEINFELD, ESQ. and )  
KLEINFELD, MEYER & DePAOLA, )  
Defendants. )  
\_\_\_\_\_  
)

CIVIL ACTION NO. 05-10454

**OPPOSITION OF THE DEFENDANTS,  
BURTON H. KLEINFELD, ESQ. AND MEYER & DePAOLA,  
TO THE PLAINTIFF'S MOTION TO AMEND COMPLAINT**

The defendants, Burton H. Kleinfeld, Esq., and Meyer & DePaola, misnamed in the Complaint as Kleinfeld, Meyer & DePaola, hereby oppose the Motion to Amend Complaint filed by the plaintiff, Perma-Pipe Inc. As grounds therefore, the defendants state as follows:

1. Perma-Pipe filed its Complaint in this matter on March 10, 2005. Over eight months later, on November 15, 2005, Perma-Pipe filed its Motion to Amend Complaint.
2. Perma-Pipe has failed to present any new evidence or information on which to base its proposed amendments to the Complaint; indeed, its proposed Amended Complaint rests on the very same exhibit which was attached to the original Complaint.
3. It is well-settled that a party should not be permitted to amend its complaint when it unduly delayed in presenting said amendments. See, e.g., Foman v. Davis, 371 U.S. 178, 182 (1962).

4. Further, Perma-Pipe bears the burden of establishing some "valid reason for [its] neglect and delay" in attempting to amend the Complaint. Acosta-Mestre v. Hilton International of Puerto Rico, Inc., 156 F.3d 49, 52 (1<sup>st</sup> Cir. 1998) (upholding the district court's denial of a motion to amend the complaint); Carter v. Supermarkets General Corp., 684 F.2d 187, 192 (1<sup>st</sup> Cir. 1982), overruled on other grounds, Burnett v. Grattan 468 U.S. 42 (1984).
5. Perma-Pipe has failed to provide any valid reason for delaying over eight months before attempting to amend the Complaint.

Accordingly, due to Perma-Pipe's undue delay in attempting to modify the Complaint, the defendants respectfully request that this honorable court DENY Perma-Pipe's Motion to Amend Complaint.

Respectfully submitted,  
**BURTON H. KLEINFELD, ESQ. and  
MEYER & DePAOLA,**  
By their attorneys,

/s/ Nancy M. Reimer  
David J. Hatem, PC (BBO #225700)  
Nancy M. Reimer (BBO #555373)  
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Dated: November 29, 2005.

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**CERTIFICATE OF SERVICE**

I, Rebecca L. Rausch, hereby certify that on this 29<sup>th</sup> day of November, 2005, I caused of copy of the foregoing document to be sent via first class mail, postage pre-paid, to:

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/s/ Rebecca L. Rausch

Rebecca L. Rausch